



**Executive Summary of the Submission Presented for the Exam of the Report of Mexico regarding its Implementation of the International Convention for the Protection of All Persons from Enforced Disappearance (CED/C/MEX/1)**

submitted by

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**TRIAL (*Track Impunity Always*)**

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DECEMBER 2014

## I. Background

1. In May 2014, the same non-governmental organizations that are signing the present document submitted to the Committee on Enforced Disappearances (“the Committee”) an alternative report mainly focused on the subject of enforced disappearance of migrants, the obstacles faced by their families in having access to justice and in discovering the truth, as well as on the loopholes of the Mexican legislation concerning enforced disappearance.
  2. On 26 September 2014 the Committee adopted a list of issues (CED/C/MEX/Q/1, hereinafter “LOIS”) concerning the report submitted by Mexico pursuant to Art. 29, para. 1, of the International Convention on the Protection of All Persons from Enforced Disappearance (“the Convention”).
  3. The subscribing associations are now submitting a second alternative report in view of the 8<sup>th</sup> session of the Committee, **addressing some of the questions formulated by the latter in its LOIS and referring to new relevant facts occurred since May 2014**. The omission of other subjects from the report shall not be interpreted by any means in the sense that the subscribing associations consider that Mexico meets all its obligations pursuant to the Convention. The **integral Spanish version this report contains also a list of recommendations** that the subscribing associations consider the Committee should address to Mexico (paras. 110-111 of the integral version in Spanish).
- ## II. The Failure to Amend Art. 215-C of the Federal Criminal Code and the Existing Flawed Legislation at the States’ Level

### Questions No. 3 and 4 of the LOIS

[...] please provide information on the current status of the initiative to amend article 215 of the Federal Criminal Code and indicate when its adoption and entry into force are expected. Please also provide information on the steps taken to ensure that all states have the offence of enforced disappearance on their books as defined in article 2 of the Convention. Please also indicate what steps have been taken towards adopting a general law on enforced disappearance, as recommended by the Working Group on Enforced or Involuntary Disappearances and the Committee against Torture.

Please describe the laws at both the federal and state levels that would apply in connection with: (a) the acts specified in article 6, paragraph 1 (a), of the Convention, i.e., ordering, soliciting or inducing the commission of, or attempting to commit, being an accomplice to or participating in an enforced disappearance, or committing any other similar act; (b) the responsibility of a superior in terms of the situations set out in article 6, paragraph 1 (b), of the Convention. In addition, with reference to paragraph 118 of the report, please elaborate on the content of the proposal to codify the criminal responsibility of superior officials and indicate how it conforms to article 6, paragraph 1 (b), of the Convention (art. 6).

4. Since May 2014, Mexico **has not amended Art. 215-A of the Federal Criminal Code** that remains at odds with international human rights law, thus hampering the prevention, investigation, and prosecution of the crime. Moreover, the **Federal Criminal Code provides for a lighter penalty for enforced disappearance than for less serious offences**, such as abduction and aggravated abduction, which is regarded as contrary to international standards on the matter. Despite the recommendations of various international human rights

mechanisms, Mexico **has not adopted a general law on enforced disappearance either**. At the States' level, four more States adopted provisions to codify enforced disappearance as a separate offence. However, **not all the definitions comply with international human rights law and there are significant discrepancies in the sanctions envisaged**. Finally, **Mexico has not codified crimes against humanity, including enforced disappearance, at any level**.

*For more details see the integral version of the report paras. 5-19*

### III. The Ongoing Lack of a Unified Database of Victims of Enforced Disappearance

#### Question No. 5 of the LOIS

Please provide updated information on the number of missing persons in the State party and the number of those persons who are presumed to have been subjected to enforced disappearance. Describe the methodology used to arrive at that figure. Please provide data, disaggregated by sex, age (adult/child), nationality and the state in question, on persons who are presumed to have been subjected to enforced disappearance. Please also provide information on the progress made in setting up the database for use in searching for disappeared persons that is mentioned in paragraph 217 of the report. Please also report on the kinds of data that will be entered into the database and the methodology that is to be used to keep it updated. Please indicate how it will be linked to the National Registry of Missing and Disappeared Persons (RNDPED) and with the records kept on unidentified bodies by forensic medical services. Please also indicate whether RNDPED data on disappeared persons is accessible to all interested parties and whether the confidentiality of protected personal information is maintained. Lastly, please provide information on the steps taken to cross-check the databases on disappeared persons with the DNA databases maintained by various institutions of the State party, such as civil service agencies at the federal and state levels, offices of attorneys general (the Office of the Attorney General of the Republic and state offices) and the National Human Rights Commission (arts. 3, 12 and 24).

5. At the time of writing, **Mexico continues lacking a unified register or database concerning disappeared persons**. The situation is **particularly alarming when it comes to migrants** disappeared in Mexico, where available data are especially imprecise and outdated, thus increasing the anguish and suffering of hundreds of families and hindering any serious attempt of search or the carrying out of effective investigations.

*For more details see the integral version of the report paras. 20-32*

#### IV. The Loopholes of Investigations on Enforced Disappearances and the Lack of Sanctions and Effective Measures of Mutual Legal Assistance and Support to Victims between Neighbouring States

##### Question No. 6 of the LOIS

[...] the Committee would appreciate receiving detailed information about the efforts made to investigate the commission of the acts defined in article 2 of the Convention by persons or groups of persons acting without the authorization, support or acquiescence of the State, in particular organized crime groups, and the efforts made to ensure that those persons are punished. Please also describe how the different criminal investigation and prosecution systems operate and provide statistics that reflect their effectiveness (art. 3). Please provide information on the nature and impact of the steps taken to investigate disappearances of migrants, some of which could be classified as enforced disappearances, and to punish those responsible. Please indicate how relatives, next of kin and their representatives who live outside the State party are guaranteed access to information on investigations. In that context, please also provide information on the steps taken to ensure cooperation with States parties whose nationals are affected by enforced disappearances and the greatest measure of mutual assistance in helping victims and searching for, locating and releasing disappeared persons.

6. The recent enforced disappearance of 43 students in Iguala, Guerrero, and the discovery of several clandestine common graves demonstrate the existing weaknesses of the Mexican investigative system vis-à-vis enforced disappearance. While the mortal remains so far exhumed from the mentioned common graves do not match with DNA samples taken from the families of the 43 students, **the mortal remains of four other victims of enforced disappearance have actually been identified**. However, the whole process of identification has been **characterised by mistakes and a disturbing attitude of indifference – when not open aggressiveness and mockery – with regard to the families of the victims**. Moreover, at the time of writing, **no one has been sanctioned for the crimes committed against the four mentioned victims and investigations are not producing meaningful results**. While the case of the 43 students caused international outrage, it must be maintained that it is **unfortunately not isolated and investigations must encompass the full scope of the phenomenon in the country**.
7. **Relatives of disappeared migrants residing abroad continue experiencing huge, and sometimes insurmountable, obstacles in their access to justice and in unveiling the truth about the fate and whereabouts of their loved ones**. First, for **relatives of migrants subjected to enforced disappearance in Mexico it is virtually impossible to report the facts to the competent Mexican authorities and to have their allegations promptly and thoroughly investigated**. This is due to the fact that they live abroad and are not in a position to legally travel to Mexico to report the facts. Further, **Mexican authorities do not recognize them their capacity as complainants**, thus concretely hampering their access to justice and their right to know the truth.
8. Even when an investigation is eventually opened, **families of migrants subjected to enforced disappearance in Mexico experience serious difficulties in having access to information concerning the progresses and results of such investigations**. This often means that relatives are prevented from providing evidence or data that may be useful to determine the identity of those responsible or to foster the process of establishing the fate and whereabouts of the victims.

9. The recent case of nine Guatemalan migrants who were last seen alive on 17 February 2014 in the State of Tamaulipas and whose fate and whereabouts remain unknown to date show the special weakness of the investigations in cases concerning migrants. Indeed, for relatives and their representatives, access to information concerning the measures potentially undertaken by the different Mexican authorities involved is low or almost inexistent. However, it would seem that authorities are not following any coordinated strategy in the investigation and, as a matter of fact, at the time of writing there is no meaningful result.
10. The **cooperation between Mexico and neighbouring States**, both with regard to legal assistance and to measures aiming at assisting victims of enforced disappearance with a view to locating and releasing disappeared persons and, in the event of death, in exhuming and **identifying them and returning their remains, is seriously flawed**. The situation regarding **Honduras**, which is another State party to the Convention, is the source of particular concern.

#### Question No. 7 of the LOIS

[...] please provide information on the scope of the requirement that “enforced disappearance [must be] a criminal offence” in the country in which it was committed and on the corresponding implications in terms of the fulfilment of the obligations contained in article 9, paragraphs 1 and 2, of the Convention. Please make special reference to the implications in cases where enforced disappearance is not expressly defined as an offence as such in the State in which it was committed. Please also specify whether, pursuant to article 6 of the Federal Criminal Code, article 9 of the Convention constitutes a sufficient basis for the exercise of jurisdiction by Mexican courts, even in cases of enforced disappearance that may have taken place in States that are not parties to the Convention (art. 9).

11. Taking into account the scope and nature of the phenomenon, it is crucial that Mexico establishes without any further delay a **transnational mechanism entrusted with the search and investigation of cases of crimes and human rights violations, including enforced disappearance, suffered by migrants**. Although some Mexican authorities expressed their willingness to explore the feasibility of such an option, at the time of writing this does not yet exist, while the ongoing humanitarian crisis calls for a swift and effective response.

*For more details see the integral version of the report paras. 33-69*

## V. The Drawbacks of Existing Legislation on Universal Jurisdiction

12. The existing legislation concerning universal jurisdiction is not fully in line with international law standards. In particular, Mexican legislation requires that the **offence of which the person is accused is codified both in the State where it was allegedly committed and in Mexico (so called “double criminality requirement”)**. This represents an undue obstacle to the exercise of universal jurisdiction, which can facilitate impunity. Moreover, Mexican legislation **does not seem to spell out with the necessary clarity that Mexican tribunals could exercise their jurisdiction when a person accused of enforced disappearance or another international crime is present in any territory under Mexican jurisdiction** and the State does not extradite him or her. In fact the practice of domestic judicial authorities in this sense is scarce when non-existent.

*For more details see the integral version of the report paras. 70-72*

## VI. The Existing Forensic Services to Identify and Return Mortal Remains

### Question No. 22 of the LOIS

Please provide information on the forensic services available in the State party to identify and return the remains of disappeared persons who were murdered. Please also describe the steps taken to ensure the coordination of forensic services in the State party and to ensure that they have the human, financial and technical resources to do their work in an effective manner. Please also provide current information on the work of the Forensic Subgroup and the Technology and Forms Subgroup of the Working Group on Enforced Disappearances, including information having to do with the national register of unidentified human remains and the register of ante-mortem information, and on progress towards the implementation of the standard identification protocol at the state level. Lastly, please describe the measures taken to locate unmarked graves and provide statistics for the period since the entry into force of the Convention concerning the persons who have been found and identified or have yet to be identified, indicating any obstacles that the State party may face in that respect (art. 24).

13. The **Forensic Commission** established in August 2013 on the basis of an agreement among the Office of the Attorney General of Mexico (*Procuraduría General de la República*), civil society organizations, and the Argentine Forensic Anthropologic Team (EAAF) and mandated to identify the mortal remains found in the mass graves concerning three major massacres (known as “the massacre of 72 migrants in Tamaulipas”, “the 49 common graves of San Fernando”, and “the 49 trunks of Cadereyta”) has made significant progresses, despite a number of bureaucratic and administrative obstacles encountered.
14. On the one hand, in July 2014 the Forensic Commission arranged the return to relatives of the mortal remains of 11 Honduran persons identified among the victims of the Cadereyta massacre. However, **many aspects of the process resulted in a re-victimization of families, mainly due to the lack of adequate and effective cooperation between Mexican and Honduran authorities:** the identity of those exhumed and identified was made public through the media before being notified directly to the families; the ceremony for the return of mortal remains was held in military facilities contrary to the explicit will of relatives; and the transportation of the remains was not duly planned or carried out in a dignified manner.
15. On the other hand, in April 2014, the local Offices of the Attorney in Tamaulipas and Nuevo León (*Procuradurías Generales de Justicia de Tamaulipas y Nuevo León*) joined the Forensic Commission by signing an addendum to the agreement establishing the latter. Notwithstanding this, **civil society organizations and relatives of disappeared persons learned only through the media that, breaching the above-mentioned agreement, on 4 October 2014 the Office of the Attorney of Tamaulipas exhumed 35 mortal remains located in San Fernando, Tamaulipas. This operation was conducted without the presence of any representative of the Office of the Attorney General of Mexico, the EAAF, or representatives of civil society organizations entitled to attend pursuant to the existing agreement.** This casts serious doubts on the reliability of the exhumations carried out by the Office of Attorney of Tamaulipas and nourishes disturbing suspicions about the possibility that similar operations actually aim at covering up, manipulating, or destroying forensic and criminal evidence.
16. Finally, although information concerning the setting up of a Genetic Database for Disappeared Persons between the Office of the Attorney General of Mexico and 12 States of the Federation has been circulated in the media, the associations subscribing the present document could not obtain precise data regarding the composition of

such database, its scope, and criteria. It is therefore almost impossible to assess its usefulness and effectiveness, as well as its relationship with already existing genetic databases in Mexico and in the region, with evident risks of overlapping, duplications, and discrepancies.

*For more details see the integral version of the report paras. 73-105*

## **VII. The Existing Legislation to Regulate the Legal Status of Disappeared Persons and their Relatives**

### **Question No. 23 of the LOIS**

Please provide information on current federal and state legislation on the legal situation of disappeared persons whose fate has not been clarified and that of their relatives in relation to such matters as social welfare, financial matters, family law and property rights (art. 24).

17. With the notable exception of the State of Coahuila, Mexican legislation **does not contain specific measures (such as the “declaration of absence due to enforced disappearance”) to regulate the legal situation of disappeared persons** whose fate has not been clarified in fields such as social welfare, financial matters, family law and property rights. Relatives are therefore forced to obtain “declarations of death”, which, given the specific nature of enforced disappearance amounts to a form of ill-treatment and is highly re-traumatizing, besides failing to address the real nature of the crime and potentially contributing to fostering impunity.

*For more details see the integral version of the report paras. 106-109*